IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6586 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

GUJ HEAVY CHEMICALS LTD

Versus

STATE OF GUJ

Appearance:

1. Special Civil Application No. 6586 of 1988

MR. S.N. THAKKAR for MR KS NANAVATI for Petitioners.

Mr. Sudhir Mehta, AGP for Respondent No. 1 & 2.

MR SL MODY for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 09/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The petitioners seek a declaration that the respondents are not authorised to levy and collect sales-tax, additional tax on sales-tax (surcharge) or such other tax on the sale/purchase of lignite, exceeding the total rate of 4%.

2. According to the petitioners, the first petitioner has established a plant with latest technology for manufacturing Soda Ash at Sutrapada in Junagadh District and for the purpose it used different types of coal, such as, hard coal, soft coal, lignite etc. as fuel. Superior quality of coal like hard coal is imported by the petitioners and inferior quality of coal is supplied by the respondent no.3.

3. It has been contended on behalf of the petitioner that lignite comes within the category of coal and as held by the Madras High Court in Deputy Commissioner of Sales-tax Vs. Kuppuswamy Chetty, 45 Sales-tax Cases 307, it is an inferior type of coal. Since lignite is an inferior type of coal, it is an item covered under Section 14 of the Central Sales-tax Act, and therefore, as provided under Section 15 of the Central Act, the State Government cannot levy and collect the sales-tax, totally at a rate more than 4%.

4. The contention raised on behalf of the respondent-authorities is that coal and lignite are commercially different substances and are so treated for the purpose of levy and collection of sales-tax.

5. Similar question as has been raised in this petition, came up for consideration in a group of petitions being Spl.C.A. no.2927/1991 and other cognate matters and the Division Bench of this Court by its decision in M/s. Sagar Tiles Company Vs. State of Gujarat and Ors., reported in (1992(1)) 33(1) G.L.R. 597 has held that applying the common parlance test, lignite was a commodity other than coal (paragraph 10 of the judgment). On going through this judgment, we are satisfied that all the contentions raised in this petition stands concluded by the said decision. In fact, this petition was ordered to be heard alongwith Spl.C.A. no.4220/1988 which is referred to in the said group of petitions in the reported judgment,, However, because through mistake, instead of writing Spl.C.A. no.4220/1988, the number was wrongly written as Spl.C.A. no.422/1987 (which was a judgment rendered by a Single

Judge in a service matter and had nothing to do with the present controversy), this petition did not come up on board alongwith the other group matters which have been disposed of by the decision in Sagar Tiles Company's case. Following the decision of this Court in Sagar Tiles Company's case, we reject this petition. Rule is discharged with no order as to costs.

(R.K.Abichandani,J.)

(Kundan Singh, J.)

stanley-rka.